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Siemens Corporation  
Intellectual Property Department  
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EXAMINER

FISCHER, ANDREW J

ART UNIT

PAPER NUMBER

3627

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/528,693	<b>Applicant(s)</b> WRIGHT ET AL.	
	<b>Examiner</b> Andrew J. Fischer	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Acknowledgements***

1. In an effort to enter Applicants' affidavits filed after final rejection as contained in at least the appeal brief filed on February 17, 2005 ("Second Appeal Brief") and to help clarify the issues for appeal, PROSECUTION IS HEREBY REOPENED. A final office action ("Third Final Office Action") is set forth below.
2. To avoid abandonment of the application, Applicants must exercise one of the following two options:
  - (1) file a reply under 37 C.F.R. §1.113; or,
  - (2) request reinstatement of the appeal.
3. If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, *but no new affidavits* or amendments (37 C.F.R. § 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 C.F.R. §1.193(b)(2).
4. Claims 1-6 remain pending.
5. Unless expressly noted otherwise, all references in this Office Action to the capitalized versions of "Applicants" or "Appellants" refers specifically the Applicants of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner(s) generally.
6. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologizes for these errors.

***Specification***

7. The disclosure is objected to because of the following informalities:

a. The specification states "Fig. 2 shows the memory of the present invention."

However a review of figure 2 shows that not only does figure 2 show memory **200**, figure 2 also show s processor **202**, internet interface 204, and display **206**. Thus Applicants statement that figure 2 show "the memory" is inaccurate. Appropriate correction is required.

***Claim Rejections - 35 USC § 112 2<sup>nd</sup> Paragraph***

8. The following is a quotation of the 2<sup>nd</sup> paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-6 are rejected under 35 U.S.C. §112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. The term "memory" in claim 1 is used by the claim to mean 'a processor, a display, and internet interface.' One of ordinary skill in the art understands that a "memory" can not contain a processor, a display, and an internet interface. Appropriate correction is required.

11. The Examiner finds that because claims 1-6 are indefinite under 35 U.S.C. §112 2<sup>nd</sup> paragraph, it is impossible to properly construe claim scope at this time. See *Honeywell International Inc. v. ITC*, 68 USPQ2d 1023, 1030 (Fed. Cir. 2003) ("Because the claims are indefinite, the claims, by definition, cannot be construed."). However, in accordance with MPEP §2173.06 and the USPTO's policy of trying to advance prosecution by providing art rejections

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even though these claim are indefinite, the claims are construed and the art is applied *as much as practically possible*.

***Claim Rejections - 35 USC §102***

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office Action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1-6, as understood by the Examiner, are rejected under 35 U.S.C. §102(b) as being anticipated by Cragun et. al. (U.S. 5,804,803) ("Cragun '803"). Cragun '803 discloses a product information apparatus comprising an indicator (radio frequency tag having code 117, translation program 110, and URL output; the bar code is a machine readable form of the URL) associated with a product and embedded in a memory (in the magnetic encoded with the radio frequency tag); a web page (document 174) indicated by the indicator (via the URL); the indicator directs the web page to product information (inherent) where the information is provided to the user (via display screen 114); wherein the indicator is specific to each product (tangible object 115) such that a plurality of indicators are needed to find out information about a plurality of products; the indicator (at least the bar code part) is disposed on the label which is on the object (tangible object 115 in Figure 1A); memory (106); means for automatically interfacing

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with the Internet to access the web page (120 and 121); and the memory is a micro-chip (inherent in radio frequency tag).

14. Claims 1-6, as understood by the Examiner, are alternatively rejected under 35 U.S.C. 102(e) as being anticipated by Reber et. al. (U.S. 5,940,595)("Reber '595"). Reber '595 discloses a product information apparatus (80) comprising an indicator (the machine readable data within the RF device which is within 80) associated with a predetermined product with the indicator embedded in a memory (the information/indicator is within the memory which is in turn, within the RF tag); the product is coupleable to a PLC (the RF device contains a PLC since the RF device is an "active" RF device and the RF device is coupleable to the product); the PLC is coupleable to a network (the Internet); the indicator is indicative of a network webpage (inherent in URLs) where product information is provided; the network webpage having an online product help window (inherent in webpages); the indicator is specific to each product (there is only one indicator per product); and the memory is a micro-chip (inherent in an "active" radio frequency tag).

***Claim Rejections - 35 USC §103***

15. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 1-6, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Cragun '803 in view of Ohanian et. al. (U.S. 6,109,526)

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("Ohanian").<sup>1</sup> It is the Examiner principle position that the claims are anticipated because of the inherent features (*i.e.* the old and well known structure and features of RF tags). However if not inherent, Ohanian directly teaches the use of RF tags in replace of bar codes because, inter alia, bar codes may be obscured.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cragun '803 as taught by Ohanian to include RF tags in replace of bar codes. Such a modification would have helped get the data more quickly if the bar codes became obscured and would have allowed the tags to be reused because they electronically rewritten with data thereby overcoming the permanency of barcode symbols.

17. Claims 1-6, as understood by the Examiner, are also alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Hudz et. al. (U.S. 5,978,773)("Hudz") in view of Ohanian. Hudz directly or inherently discloses all the claimed features except it uses bar codes instead of memory. Ohanian directly teaches the use of RF tags (a PLC) in replace of bar codes because, inter alia, bar codes may be obscured.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hudz as taught by Ohanian to include RF tags in replace of bar codes. Such a modification would have helped get the data more quickly if the bar codes became obscured.

18. The Examiner finds that it is old and well known to one of ordinary skill in this art to use an indicator (*e.g.* a UPC number or bar code) to retrieve product information—such as user manuals—via the Internet. See *e.g.* Call (U.S. 5,913,210).

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<sup>1</sup> See MPEP §2112 expressly authorizing alternative §102/§103 rejections when the question of inherency is present in the anticipation rejection.

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19. Moreover, it is the Examiner's factual determination that bar code tags and radio frequency ("RF") tags are art recognized equivalents. See MPEP §2144.06. Both bar code tags and RF tags are used for the same purpose: conveying information about the article to which the tags are attached to a reader machine. Additionally, one of ordinary skill in the art recognizes that the selection of either a bar code tag over an RF tag (or vice versa, RF tag over a bar code tag) is not enough to distinguish the claimed invention over the prior art since both devices are recognized as interchangeable depending upon their intended use or the particular environment in which the tag will be used. See MPEP §2144.07. Evidence to support these conclusions includes but is not limited to Rakers et. al. (U.S. 6,763,996 B2); Keys et. al. (U.S. 6,758,403 B1); Monico (U.S. 6,557,758 B1); McAllister (U.S. 6,415,978 B1); Helton et. al. (U.S. 6,357,662 B1); Maloney (U.S. 6,232,876 B1); Wurtz et. al. (U.S. 5,838,253); Rupport et. al. (U.S. 5,640,002); Kewin (U.S. 5,595,356); Eberhardt (U.S. 5,28,784); and Scribner et. al. (U.S. 4,688,026).

20. Additionally, it is the Examiner's factual determination that help systems using windows and having email and chat capabilities are old and well known in the art. See *e.g.* Pinard et. al. (U.S. 6,230,287 B1); Sullivan et. al. (U.S. 6,694,314 B1); Sullivan et. al. (U.S. 6,477,531 B1); Stahorn et. al. (U.S. 5,933,140); Baldwin et al (U.S. 5,877,757); Crawford (U.S. 5,754,176); Chefalas et. al. (U.S. 6,785,834 B2); and Grewal et. al. (U.S. 5,591,159 B1).

### *Lexicography*

21. For due process purposes, the Examiner again confirms that Applicants have decided not to be their own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and accustomed meanings. To support this position, the Examiner



again notes the following factual findings as first discussed in the previous Office Actions.<sup>2</sup> First, the Examiner has again carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only have Applicants not pointed to definitional statements in their specification or prosecution history, Applicants have also not pointed to a term or terms in a claim with which to draw in those statements<sup>3</sup> with the required clarity, deliberateness, and precision.<sup>4</sup> Third, after receiving express notice of the Examiner's position that lexicography is *not* invoked,<sup>5</sup> Applicants' responses have not point out the "supposed errors" in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (i.e. Applicants did not argue lexicography *was* invoked). Forth and to be sure of Applicants' intent, the Examiner also notes that Applicants have declined the Examiner's express invitation to be their own lexicographer. Finally, after receiving express notice of the preceding factual findings and conclusions, Applicants' latest response again fails to point out the supposed errors in the Examiner's position regarding lexicography invocation in

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<sup>2</sup> See the Examiner's Office Action mailed January 6, 2003 ("First Non Final Office Action") Paper No. 9, Paragraph No. 18; the Office Action mailed July 30, 2003 ("First Final Office Action"), Paper No. 14, Paragraph No. 18; the Office Action mailed December 17, 2003, ("Second Non Final Office Action") Paper No. 18, Paragraph No. 14; and the Office Action mailed May 18, 2004 ("Second Final Office Action"), Paragraph No. 9.

<sup>3</sup> "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

<sup>4</sup> "The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

<sup>5</sup> See Note 2.

accordance with 37 C.F.R. §1.111(b). Moreover, Applicants' latest response—while fully considered by the Examiner—does not change the Examiner's conclusion that Applicants have decided not to be their own lexicographer. Therefore (and except for phrases that invoke 35 U.S.C. §112 6<sup>th</sup> paragraph), the heavy presumption in favor of the ordinary and accustomed meaning for claim terminology is confirmed. Accordingly, the claims continue to be interpreted with their "broadest reasonable interpretation," *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). The Examiner notes that his includes "programmable logic controller" and thus, "programmable logic controller" retains its broadest reasonable interpretation. The Examiner continues to rely heavily and extensively on this interpretation.<sup>6</sup>

#### *Other Claim Interpretation Issues*

22. Under the broadest reasonable interpretation standard noted above and unless modified in this Office Action, the Examiner maintains his interpretations including the statements and/or definitions of claim limitations as noted in previous Office Action. Those previous definitions are part of the administrative record and, in accordance with *In re Morris*, are provided simply as a factual source to support the Examiner's claim interpretations (and ultimately the Board of Patent Appeals and Interferences claim interpretations if necessary<sup>7</sup>) during ex parte examination.

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<sup>6</sup> See 37 C.F.R. §1.104(c)(3) which states in part: "the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability . . . . [Emphasis added.]"

<sup>7</sup> See *Gechter v. Davidson*, 116 F.3d 1454, 1460, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997) ("[W]e hold that the Board is required to set forth in its opinions specific findings of fact and conclusions of law adequate to form a basis for our review.").

23. The Examiner maintains his position that the “means for automatically interfacing to the Internet to access said web page based on said indicator” is Internet Interface 204.

### *Response to Arguments*

#### *Reopening Prosecution*

24. is the Examiner’s position that reopening prosecution is the easiest method by which Applicants’ declaration(s) can be entered. Because it is the Examiner position that he has established a prima facie case of anticipation and/or obvious even in the declarations are entered for at least two (2) reasons (*i.e.* (1) since the Examiner is not required to rely on Applicants’ definition for “programmable logic controller” (“PLC”) in the declarations, his definition controls; and (2) even if required to use Applicant’s definition for PLC, the references disclose the PLC as defined in the declarations), compact prosecution and due process dictate that the Examiner should at least allow Applicants to argue their position in their appeal.<sup>8</sup>

#### *Williams’s Declarations*

25. The Examiner has reviewed the declarations of Dr. Ronald D. Williams filed under 37 C.F.R. §1.132 and they are not persuasive. Because the declarations appear to be duplicative, the Examiner has entered the Declaration filed February 17, 2005 (*i.e.* the third declaration filed with Applicants’ Second Appeal Brief).

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<sup>8</sup> If the declaration was not entered, such arguments would be moot since the declarations would not have been of record.

26. It is the Examiner's position that except for lexicography and the invocation of 35 U.S.C. §112 6<sup>th</sup> paragraph, the Examiner is free to rely on his definition of a claim term as long as that definition is reasonable. "Absent an express definition in their specification, the fact that appellants can point to definitions or usages that conform to their interpretation does not make the PTO's definition unreasonable when the PTO can point to other sources that support its interpretation." *Morris*, 127 F.3d at 1056, 44 USPQ2d at 1029. Thus, *Morris* is controlling on this point. In this case, the Examiner points to the Computer Dictionary, 3<sup>rd</sup> Edition, Microsoft Press, Redmond, WA, 1997, as evidence to support his position. If the Computer Dictionary is good enough for the Court of Appeals for the Federal Circuit, its good enough for the Examiner. See *e.g. Altiris Inc. v. Symantec Corp.*, 318 F.3d 1363, 1373, 65 USPQ2d 1865, 1872 (Fed. Cir. 2003) where the Federal Circuit used the Computer Dictionary as "a technical dictionary" to define the term "flag."

27. Furthermore, the Examiner notes that he has broad discretion as to the weight to give to declarations offered in the course of prosecution. Although there is no reason why opinion evidence relating to a fact issue should not be considered by examiners, examiners as fact finders<sup>9</sup> are entitled to weigh the declarations and conclude that the lack of factual corroboration warrants discounting the opinions expressed in the declarations. See *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1368, 70 USPQ2d 1827, 1833 (Fed. Cir. 2004). In this case, the Examiner has weighed the Williams declaration filed February 17, 2005 and finds that

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<sup>9</sup> "During the prosecution of the . . . application, the patent Examiner acts as a factfinder." *Waldemar Link GmbH & Co. v. Osteonics Corp.*, 32 F.3d 556, 558, 559, 31 USPQ2d 1855, 1857 (Fed. Cir. 1994).

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the statements therein are either moot, not on point, or that the lack of factual corroboration warrants discounting the opinions expressed therein.

28. In particular and with respect to the ordinary and accustomed meaning of “programmed logic controller” as found in paragraph no. 12, page 3, of the Williams declaration filed February 17, 2005, the declaration fails to cite a single independent source in support of William’s position. Thus, the Examiner finds that the definition for “programmed logic controller” lacks factual corroboration.

29. With respect to the other statements in the Williams declaration filed February 17, 2005, the Examiner finds that the positions taken in the declaration are either moot, not on point, or that the lack of factual corroboration warrants discounting the opinions expressed therein.

30. Regarding Applicants’ discussion of the PAIR system in their Second Appeal Brief on page 8, the discussion is moot since the Examiner has entered the Williams declarations.

31. Finally, the Examiner notes that just because the Examiner points out errors in Applicants’ arguments or statements of fact does not mean that the Examiner has raised a *new* issue as alleged by Applicants in their Second Appeal Brief, page 8, ~ lines 15-19. To the contrary, since the requirements existed all along, the fact that the Examiner has brought Applicants’ deficiencies to the attention of Applicants only means that the deficiencies remain and Applicants’ point or argument is not persuasive.

### ***Prior Art***

32. Applicants arguments with respect to the prior art have been considered but are not persuasive. First and because Applicants’ arguments are based upon their erroneous interpretation of “programmed logic controller,” their arguments are not persuasive.

***Inherency***

33. The Examiner maintains his position that inherency is established by a preponderance of the evidence. *In re Epstein*, 32 F.3d 1559, 1564, 31 USPQ2d 1817, 1820 (Fed. Cir. 1994) (“Preponderance of the evidence is the standard that must be met by the PTO in making rejections.” (citations and quotations omitted)). Thus, the standard for proving inherent elements—like the standard for proving directly disclosed elements—is ‘preponderance of the evidence.’ See also MPEP §706 I. which expressly states: “The standard to be applied in *all cases* is the ‘preponderance of the evidence’ test. In other words, an examiner should reject a claim if, in view of the prior art and evidence of record, it is more likely than not that the claim is unpatentable. [Emphasis added.]”

34. The Examiner notes that the case cited by Applicants for inherency (*i.e. Trintec Indus. v. Top-U.S.A. Corp.*) involves inter partes litigation—not ex parte examination. Because the standards are for claim interpretation between inter partes litigation and ex parte examination are different,<sup>10</sup> Applicants’ point is not persuasive.

***Reber***

35. Applicants argue that Reber does not disclose “an online product support help window.” First, the Examiner finds that the mainstream operating system on personal computers is called “Windows.” Therefore the Examiner finds that programs such as browsers run in “a window.”

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<sup>10</sup> “From *In re Etter*, 756 F.2d 852, 225 USPQ 1 (Fed. Cir. 1984) (en banc), it is apparent that, due to 35 U.S.C. §282, the standard of proof required to properly reject the claims of a patent application is necessarily lower than that required to invalidate patent claims.” *In re Caveney*, 761 F.2d 671, 674, 226 USPQ 1, 3 (Fed. Cir. 1985).

These systems have help menus. Thus, the Examiner finds that browsers disclose "an online product support help window."

*Conclusion*

36. Applicants' amendment filed March 3, 2004 necessitated the new grounds of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

37. References considered pertinent to Applicants' disclosure are listed on form PTO-892. Unless expressly noted otherwise by the Examiner, all references listed on form PTO-892 are cited in their entirety.

38. The following two (2) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action: MPEP citations to Chapters 100, 200, 500, 600, 700, 1000, 1100, 1300, 1400, 1500, 1700, 1800, 2000, 2100, 2200, 2500, 2600, and 2700 are from the MPEP 8<sup>th</sup>

Edition, Rev. 2, May 2004. All remaining MPEP citations are from MPEP 8<sup>th</sup> Edition, August 2001.

39. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

40. Because this application is now final, Applicants are again reminded of the USPTO's after final practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is *not* a matter of right. "The refusal of an examiner to enter an amendment after final rejection of claims is a matter of discretion." *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed. Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided by the Examiner are just that—suggestions or examples—and do not constitute a formal requirement mandated by the Examiner. Unless stated otherwise by an express indication that a claim is "allowed," exemplary claim language provided by the Examiner to overcome a particular rejection or to change claim interpretation has *not been addressed* with respect to other aspects of patentability (*e.g.* §101 patentable subject matter, §112 1<sup>st</sup> paragraph written description and enablement, §112 2<sup>nd</sup> paragraph indefiniteness, and §102 and §103 prior art). Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an Examiner suggestion or example or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.



41. Also in accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that Nathan J. Muller's Desktop Encyclopedia of the Internet, ("Desktop Encyclopedia") is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. Muller's Desktop Encyclopedia is a practical reference that clearly explains Internet services, applications, protocols, access methods, development tools, administration and management, standards, and regulations. Because of the reference's basic content (which is self-evident upon examination of the reference) and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that the Desktop Encyclopedia is primarily directed towards those of low skill in this art. Because the reference is directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within the Desktop Encyclopedia.

42. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. The Examiner notes and thanks Applicants for their arguments in the Second Appeal Brief traversing the Examiner's positions on various points. If Applicants disagree with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,<sup>11</sup> the

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<sup>11</sup> *E.g.*, if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.

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Examiner respectfully reminds Applicants to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in their next properly filed response. By addressing these issues now, matters where the Examiner and Applicants agree can be eliminated allowing the Examiner and Applicants to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicants have any questions regarding the Examiner's positions or have other questions regarding this communication or even previous communications, Applicants are strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (703) 305-0292. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Robert Olszewski, can be reached at (703) 308-5183. The fax number for facsimile responses is now (703) 872-9306.



Andrew J. Fischer  
Primary Examiner  
Art Unit 3627